

BUREAU OF AUTOMOTIVE REPAIR
INITIAL STATEMENT OF REASONS

Hearing Dates: October 5 and 7, 2005

Subject Matter of Proposed Regulations: Revised Estimates; Additional Authorization; Customer's Designee.

Sections Affected: § 3353, Title 16, Division 33, Chapter 1, Article 5.5, California Code of Regulations.

Problem Addressed:

Chapter 874, Statutes of 2004 (AB 1079, Bermudez), among other things, amended Business and Professions Code section 9880.1 by adding a definition of the term "customer" for purposes of the Automotive Repair Act (Business and Professions Code, Chapter 20.3, Article 1, § 9880, et seq.). In addition, Assembly Bill 1079 amended Section 9884.9 by adding a provision that allows a customer to designate another person to authorize work or parts supplied in excess of the estimated price, if the designation is made in writing at the time that the initial authorization to proceed is signed by the customer. The bill also prohibits an automotive repair dealer (ARD) providing repair services or an insurer involved in a claim that includes the motor vehicle being repaired, or an employee or agent acting on behalf of an ARD or insurer, from being named as the designee. However, AB 1079 did not provide any direction as to the specific procedures to be followed or the documentation to be maintained, other than to authorize the Bureau of Automotive Repair (Bureau) to specify in regulation the form and content of a designation and the procedures to be followed by an ARD in recording the designation.

Specific Purpose of Regulatory Proposal:

The proposed regulatory action, as authorized in Assembly Bill 1079, will establish the form and content for the customer's designation of another person who can authorize work or parts to be supplied in excess of the estimated price. The intent of the proposed action is to maintain all of the current protections provided to consumers when estimates are revised, while providing for the maximum convenience and efficiency. The implementation of the designation provisions of AB 1079 will address situations in which the customer knows, in advance, that he or she will not be available to give additional authorization, or in which it is appropriate or desirable that another person give such authorization. In this regard, full disclosure and complete documentation – similar to that currently required for oral/telephonic authorizations – will be required under the proposed action. Multiple methods of communication will still be permitted in a single transaction (i.e., a faxed revised estimate may be responded to either by fax, e-mail or telephone), thereby providing the maximum degree of flexibility. Provision for maintaining a record of the designation is also included.

Factual Basis:

For decades the Automotive Repair Act has required disclosure, authorization and documentation regarding estimates and revised estimates in order to decrease or prevent the occurrence of what was commonly called “the five o’clock surprise.” Prior to enactment of the Automotive Repair Act, it was not uncommon for a customer to arrive at the automotive repair dealer, at or near closing time, to pick up their vehicle only to learn for the first time that a \$100 repair estimate had, for example, somehow increased to an \$800 repair bill. In these situations the consumer is at a distinct disadvantage – the shop has the car, the consumer needs it back. Generally, the only immediate solution to this problem was to pay the bill and try to work it out later. The statutes and regulations regarding estimates, revised estimates and invoices have provided the Bureau and the automotive repair industry, with the necessary tools to prevent “the five o’clock surprise” and/or assist consumers who may be victims of it.

Government has also recognized the advantages of “E-Commerce” in today’s technological society in the passage of Assembly Bill 1778 in 2000 (Chapter 336, Statutes of 2000). Many consumers today either have or have access to, fax machines and e-mail. Many automotive repair dealers also have the same technology available. It is becoming more and more common today for customers to communicate electronically with automotive repair dealers.

However, until the passage of Assembly Bill 1079, the law did not take into account the possible unavailability of the customer or the need to designate another person to act when additional authorization is necessary. An ARD would not be able to complete the repair of a vehicle if additional work or parts not initially estimated were required and the customer was not available to give authorization. In such a situation, the “five o’clock surprise” could be the incomplete repair of the vehicle when the customer returns to claim it. The proposed action will, as provided in Assembly Bill 1079, implement provision for the designation by a customer of another person who can give additional authorization.

As with all the other requirements relating to estimates, work orders, additional authorization and invoices, it is essential that a complete record be kept in the event of a dispute. The form and content of the designation must be uniformly clear and direct. A record of the designation must also be maintained with the other documents related to the particular transaction, but there should be some flexibility in how and where that record is maintained. A separate designation form that is attached to the work order would be acceptable, as would inclusion of the designation in the work order form itself. Individual automotive repair dealers should be given the ability to choose the option that works best and is most economical for them.

Underlying Data:

None.

Business Impact:

This regulation may have a significant adverse economic impact on businesses. This

initial determination is based on the following facts or evidence/documents/testimony:

ARDs will be required to create and maintain a customer designation form either as a separate document or as part of their estimate and work order form. They will be required to complete or have completed, in duplicate, a customer designation form when a customer wishes to designate another person to authorize additional repairs or parts. The original executed designation will be required to be attached to and retain it with, the work order retained by the ARD.

Description of alternatives which would lessen any significant adverse impact on business:

No alternatives have been considered or identified.

Specific Technologies or Equipment:

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives:

No reasonable alternative which was considered or that has otherwise been identified and brought to the attention of the Bureau would be either more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed regulation.

No reasonable alternative has been considered or identified.